

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED

MAR - 4 2008

Federal Communications Commission
Office of the Secretary

In the Matter of)	EB Docket No. 07-197
)	
Kurtis J. Kintzel, Keanan Kintzel, and all)	File No. EB-06-IH-5037
Entities by which they do business before)	NAL/Acct. No. 200732080029
the Federal Communications Commission)	
)	FRN No. 0007179054
)	

To: Kurtis J. Kintzel, Keanan Kintzel, and all
Entities by which they do business before
the Federal Communications Commission

**ENFORCEMENT BUREAU'S OBJECTIONS AND RESPONSES
TO DEFENDANTS' SECOND SET OF INTERROGATORIES**

On February 19, 2008, Defendants Kurtis J. Kintzel, Keanan Kintzel, and all Entities by which they do business before the Federal Communications Commission ("Defendants"), filed their Second Set of Interrogatories ("Interrogatories") in the above-captioned proceeding. The Enforcement Bureau ("Bureau"), pursuant to Section 1.323(b) of the Commission's rules, 47 C.F.R. § 1.323(b), hereby submits its objections and responses to the Interrogatories. The responses were drafted by counsel of record for the Bureau, in consultation with Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission.

The Bureau notes that discovery in this proceeding has only just commenced. The Bureau reserves the right to supplement its responses to the Interrogatories based upon information obtained during the course of discovery.

Objections

1. By the subject Interrogatories, Defendants seek information from the Bureau

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that is neither relevant to any issue designated in the captioned proceeding nor is reasonably calculated to lead to the discovery of admissible evidence.

2. By the subject Interrogatories, Defendants seek discovery from the Bureau that is outside the purview of permissible discovery under Section 1.311(b)(4) of the Commission's rules, 47 C.F.R. § 1.311(b)(4).

3. By the subject Interrogatories, Defendants improperly seek to have the Bureau engage in legal argument and provide characterization of evidence.

Responses

1. Provide the following details on the 10 slamming complaints mentioned in the Order to Show Cause, FCC 07-165: (a) Billing telephone number of each complainant, (b) dates that each purported slamming violation took place, (c) whether the complainant was ever charged a switch-over fee by his/her local telephone company for switching to Buzz Telecom Corp. or Business Options, Inc., and if so, the month/year that the switch-over fee was charged, (d) any other details available about the slamming complaint.

Response: The Bureau objects to Interrogatory No. 1 to the extent the information sought is outside the purview of permissible discovery against Commission personnel under 47 C.F.R. § 1.311(b)(4). The Bureau further objects to subpart (d) of Interrogatory No. 1 – asking for “any other details available about the slamming complaint” – as unduly vague. The Bureau also objects to Interrogatory No. 1 to the extent that discovery in this proceeding has only just begun. The Bureau will be seeking discovery of many types of documents, including the categories of documents set forth in the Bureau's First Request for Production of Documents to All Defendants, which documents are likely to provide the details sought by Interrogatory No. 1. Notwithstanding and subject to the foregoing objections, the Bureau states that certain of the information sought by Interrogatory No. 1 is available from the copies of the slamming complaints forwarded to Kurtis Kintzel via e-mail from Brian Hendricks, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, on January 30, 2007. The Bureau also has the following information:

Irene Mowan: (a) (541) 276-9135; (b) on or about August 8, 2006; and (c) a “Buzz Activation Fee” of \$29.95 appeared on a bill dated August 28,

2006, as well as a "Super Saver Monthly Fee" of \$4.90 and a "Carrier Cost Recover Fee" of \$4.95.

Mindy Stoltzfus: (a)) (712) 732-0991; (b) on or about September 11, 2006; and (c) a bill dated 10/9/06 reflects a "past due balance" of \$39.80, a "Carrier Recovery Fee" of \$4.95 and a "Monthly Service Fee" of \$4.90.

2. Identify all documents/tangible things that the FCC intends to rely upon to prove that the 10 complainants identified in response to Interrogatory No. 1 actually had their longdistance telephone service switched to that of Buzz Telecom Corp. or Business Options, Inc.

Response: The Bureau objects to Interrogatory No. 2 to the extent that discovery in this proceeding has only just begun. The Bureau will be seeking discovery of many types of documents, including the categories of documents set forth in the Bureau's First Request for Production of Documents to All Defendants. Moreover, the Bureau has not yet decided on which documents it intends to rely in supporting its allegations and claims. Notwithstanding and subject to the foregoing objections, the Bureau states that it has obtained 25 pages of documents from Gail Perry, who lodged one of the ten referenced complaints on behalf of her mother, Irene Mowan, as well as 14 pages of documents from Mindy Stoltzfus. The Bureau has no additional non-privileged documents at this time.

3. Identify all documents/tangible things that the FCC intends to rely upon to prove that the 10 complainants identified in response to Interrogatory No. 1 were actually customers of Buzz Telecom Corp. or Business Options, Inc.

Response: The Bureau objects to the use of the term "customers" in Interrogatory No. 3, as that term connotes the existence of a mutually agreed-upon business relationship. The Bureau further objects to Interrogatory No. 3 to the extent that discovery in this proceeding has only just begun. The Bureau will be seeking discovery of many types of documents, including the categories of documents set forth in the Bureau's First Request for Production of Documents to All Defendants. Moreover, the Bureau has not yet decided on which documents it intends to rely in supporting its allegations and claims. Notwithstanding and subject to the foregoing objections, the Bureau states that it has obtained 25 pages of documents from Gail Perry, who lodged one of the ten referenced complaints on behalf of her mother, Irene Mowan. The Bureau has no additional non-privileged documents at this time.

4. Identify all documents/tangible things that the FCC intends to rely upon to prove that any customers of Buzz Telecom Corp. or Business Options, Inc., actually had their long-distance service discontinued.

Response: The Bureau objects to Interrogatory No. 4 to the extent that discovery in this proceeding has only just begun. The Bureau will be seeking discovery of many types of documents, including the categories of documents set forth in the Bureau's First Request for Production of Documents to All Defendants. Moreover, the Bureau has not yet decided on which documents it intends to rely in supporting its allegations and claims. Notwithstanding and subject to the foregoing objections, the Bureau states that the following documents currently in the Bureau's possession contain relevant information:

- Defendants' responses to requests for admissions and discovery requests propounded in the current hearing proceeding.
- The December 20, 2006 letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, to Keanan Kintzel, Business Options, Inc.
- Documents provided to the Commission by BOI and/or Buzz in connection with the January 17, 2007 response to the December 20, 2006 letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, to Keanan Kintzel, Business Options, Inc.
- Documents attached as exhibits to the Bureau's Requests for Admission of Facts and Genuineness of Documents to the Defendants.
- January 22, 2007 deposition of Kurtis Kintzel in the matter captioned *Matter of the Commission Staff's Investigation into the Alleged MTSS Violations of Buzz Telecom*, Case No. 06-1443-TP-UNC, before the Public Utilities Commission of Ohio.
- February 26, 2007 deposition of Steve Hansen, on behalf of Qwest Communications Corp., in the matter captioned *Rule Nisi Proceeding in the Matter of Buzz Telecom, Business Options, Inc., UMCC Holdings, Inc., and Ultimate Medium Communications Corporation: Allegation of Violation(s) of Georgia Public Service Commission Rules and the Telecommunications Marketing Act of 1998*, Docket No. 15968-U.

- February 28, 2007 hearing transcript in the matter captioned *Rule Nisi Proceeding in the Matter of Buzz Telecom, Business Options, Inc., UMCC Holdings, Inc., and Ultimate Medium Communications Corporation: Allegation of Violation(s) of Georgia Public Service Commission Rules and the Telecommunications Marketing Act of 1998*, Docket No. 15968-U.

5. Identify all customers of Buzz Telecom Corp. and/or Business Options, Inc., who filed a complaint with the FCC because they were disconnected from Buzz Telecom Corp. and/or Business Options, Inc., without notification and/or unable to make outbound long-distance telephone calls.

Response: The Bureau objects to Interrogatory No. 5 as outside the purview of permissible discovery against Commission personnel under 47 C.F.R. § 1.311(b)(4) because the information sought is not within the direct personal knowledge of specific Commission personnel to whom the interrogatories were directed. Notwithstanding and subject to the foregoing objection, the Bureau is in the process of seeking such information to the extent it exists and will supplement its response to Interrogatory No. 5 as soon as practicable.

6. Identify all documents/tangible things that the FCC intends to rely upon to prove that such disconnects and/or lack of notification, as described in the responses to Interrogatory No. 5, actually took place.

Response: The Bureau objects to Interrogatory No. 6 to the extent that discovery in this proceeding has only just begun. The Bureau will be seeking discovery of many types of documents, including the categories of documents set forth in the Bureau's First Request for Production of Documents to All Defendants. Moreover, the Bureau has not yet decided on which documents it intends to rely in supporting its allegations and claims. Notwithstanding and subject to the foregoing objections, the Bureau states that it is unaware of any such customers of Buzz Telecom Corp. or Business Options, Inc.

7. Identify all evidence and/or legal theories that the FCC intends to rely upon to prove that the Kintzels, et al., are liable for the discontinuation of service mentioned in the Order to Show Cause, rather than Qwest.

Response: The Bureau objects to Interrogatory No. 7 to the extent it calls

for legal conclusions. The Bureau further objects to Interrogatory No. 7 to the extent that discovery in this proceeding has only just begun. The Bureau will be seeking discovery of many types of documents, including the categories of documents set forth in the Bureau's First Request for Production of Documents to All Defendants. Notwithstanding and subject to the foregoing objections, the Bureau states that it has not yet decided on which documents it intends to rely in supporting its allegations and claims.

8. Disclose whether provisions were considered or made with respect to the 2004 Consent Decree, to prepare for the contingency that Business Options, Inc., would be unable to continue paying the voluntary contributions due to insolvency.

Response: The Bureau objects to Interrogatory No. 8 to the extent it seeks information protected from disclosure under the attorney client privilege or attorney work product doctrine. The Bureau further objects to Interrogatory No. 8 as seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

9. Disclose all long-distance providers or resellers that have ever fallen behind in Universal Service Fund contributions, and describe all actions taken against them by the Commission and what resolution was reached.

Response: The Bureau objects to Interrogatory No. 9 as outside the purview of permissible discovery against Commission personnel under 47 C.F.R. § 1.311(b)(4) because the information sought is not within the direct personal knowledge of specific Commission personnel to whom the interrogatories were directed. The Bureau further objects to Interrogatory No. 9 to the extent it seeks to have the Bureau perform legal research on behalf of Defendants. This Interrogatory would require the Bureau to survey all Commission enforcement actions to acquire information unrelated to the facts at issue in this proceeding. In this regard, the Bureau also objects to Interrogatory No. 9 to the extent that the information sought is readily available to Defendants and is a matter of public record. This would include all Notices of Apparent Liability, Forfeiture Orders and Consent Orders issued by the Commission. As to this publicly available information, Defendants are free to conduct legal research regarding Commission precedent. To the extent the information sought is not publicly available, however, the Bureau objects to Interrogatory No. 9 because what minimal relevance the requested information may have (of which the Bureau believes there is none) is outweighed by the burden of gathering and conveying this information. Furthermore, with respect to information that is not publicly available, the Bureau objects to Interrogatory No. 9 as seeking confidential information that the Bureau is not at liberty to disclose pursuant

to the Commission's rules governing publicly available information and inspection of records. Finally, the Bureau objects to Interrogatory No. 9 on the grounds that it is overly broad in that it is not limited to a reasonable period of time.

10. Disclose all long-distance providers or resellers that have ever fallen behind in Telecommunications Relay Service contributions, and describe all actions taken against them by the Commission and what resolution was reached.

Response: The Bureau objects to Interrogatory No. 10 as outside the purview of permissible discovery against Commission personnel under 47 C.F.R. § 1.311(b)(4) because the information sought is not within the direct personal knowledge of specific Commission personnel to whom the interrogatories were directed. The Bureau further objects to Interrogatory No. 10 to the extent it seeks to have the Bureau perform legal research on behalf of Defendants. This Interrogatory would require the Bureau to survey all Commission enforcement actions to acquire information unrelated to the facts at issue in this proceeding. In this regard, the Bureau also objects to Interrogatory No. 10 to the extent that the information sought is readily available to Defendants and is a matter of public record. This would include all Notices of Apparent Liability, Forfeiture Orders and Consent Orders issued by the Commission. As to this publicly available information, Defendants are free to conduct legal research regarding Commission precedent. To the extent the information sought is not publicly available, however, the Bureau objects to Interrogatory No. 10 because what minimal relevance the requested information may have (of which the Bureau believes there is none) is outweighed by the burden of gathering and conveying this information. Furthermore, with respect to information that is not publicly available, the Bureau objects to Interrogatory No. 10 as seeking confidential information that the Bureau is not at liberty to disclose pursuant to the Commission's rules governing publicly available information and inspection of records. Finally, the Bureau objects to Interrogatory No. 10 on the grounds that it is overly broad in that it is not limited to a reasonable period of time.

11. Disclose whether any long-distance provider or reseller has ever become insolvent and/or filed for bankruptcy with a balance due and owing on any FCC-mandated obligation, and describe all actions taken against them by the Commission and what resolution was reached.

Response: The Bureau objects to Interrogatory No. 11 as outside the purview of permissible discovery against Commission personnel under 47

C.F.R. § 1.311(b)(4) because the information sought is not within the direct personal knowledge of specific Commission personnel to whom the interrogatories were directed. The Bureau further objects to Interrogatory No. 11 to the extent it seeks to have the Bureau perform legal research on behalf of Defendants. This Interrogatory would require the Bureau to survey all Commission enforcement actions to acquire information unrelated to the facts at issue in this proceeding. In this regard, the Bureau also objects to Interrogatory No. 11 to the extent that the information sought is readily available to Defendants and is a matter of public record. This would include all Notices of Apparent Liability, Forfeiture Orders and Consent Orders issued by the Commission. As to this publicly available information, Defendants are free to conduct legal research regarding Commission precedent. To the extent the information sought is not publicly available, however, the Bureau objects to Interrogatory No. 11 because what minimal relevance the requested information may have (of which the Bureau believes there is none) is outweighed by the burden of gathering and conveying this information. Furthermore, with respect to information that is not publicly available, the Bureau objects to Interrogatory No. 11 as seeking confidential information that the Bureau is not at liberty to disclose pursuant to the Commission's rules governing publicly available information and inspection of records. Finally, the Bureau objects to Interrogatory No. 11 on the grounds that it is overly broad in that it is not limited to a reasonable period of time.

12. Disclose whether the Enforcement Bureau is seeking to impose liability on Kurtis J. and Keanan Kintzel individually for all of the alleged violations described in the Order to Show Cause, FCC 07-165, or only for select alleged violations. If only for select alleged violations, identify which select alleged violations. (Identification of the alleged violation by category/descriptor is sufficient. For example, is the Bureau seeking to impose liability on Kurtis J. and Keanan Kintzel individually for the alleged slamming violations? For the alleged Consent Decree violations? Or only for the alleged discontinuation of service?)

Response: The Bureau objects to Interrogatory No. 12 to the extent that discovery in this proceeding has only just begun. Notwithstanding and subject to the foregoing objection, the Bureau states that the Order to Show Cause speaks for itself.

13. With respect to Your responses to Interrogatory No. 12, disclose the legal

theories You intend to rely upon for imposing individual liability on Kurtis J. and Keanan Kintzel, rather than on their companies (or, in addition to their companies), as to each of the alleged violations for which You are seeking to impose individual liability.

Response: The Bureau objects to Interrogatory No. 13 to the extent it calls for legal conclusions. The Bureau further objects to Interrogatory No. 12 to the extent that discovery in this proceeding has only just begun.

Kris Anne Monteith
Chief, Enforcement Bureau

Michele Levy Berlove

Michele Levy Berlove
Attorney, Investigations and Hearings Division

Federal Communications Commission
445 12th Street, S.W., Room 4-C330
Washington, D.C. 20554
(202) 418-1420

March 4, 2008

CERTIFICATE OF SERVICE

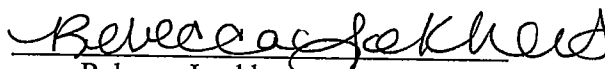
Rebecca Lockhart, a Paralegal Specialist in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 4th day of March, 2008, sent by first class United States mail copies of the foregoing **Enforcement Bureau's Objections and Responses to Defendants' Second Set of Interrogatories** to:

Catherine Park, Esq.
2300 M Street, NW, Suite 800
Washington, D.C. 20037

Counsel for Kurtis J. Kintzel, Keanan Kintzel, Business Options, Inc., Buzz Telecom Corporation, US Bell, Inc., Link Technologies and Avatar Enterprises

A copy of the foregoing was also served via hand-delivery to:

Administrative Law Judge Richard L. Sippel
Federal Communications Commission
445 12th Street, S.W., Room 1-C861
Washington, D.C. 20054


Rebecca Lockhart